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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

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**PARTIAL OPPOSITION TO
PETITIONS FOR RECONSIDERATION**

Mankato Citizens Telephone Company ("MCTC") by its attorneys and pursuant to Section 1.429 of the Commission's Rules, files this Partial Opposition to Petitions for Reconsideration filed by Omnipoint Communications, Inc. ("Omnipoint") and BET Holdings, Inc. ("BHI") in the captioned proceeding.

STATEMENT OF INTEREST

MCTC is a local exchange telephone company serving approximately 29,000 access lines in the State of Minnesota. MCTC has sister telephone companies providing local exchange telephone service in Minnesota and Iowa. Collectively, these companies serve approximately 38,000 access lines; they are all wholly owned by the Hickory Tech Corporation ("Hickory"). Hickory is a diversified company which also owns subsidiaries in the computer service, equipment sales and manufacturing industries. Hickory's gross revenues and total assets have not exceeded approximately \$56 million and \$63 million, respectively, in each of the last three years.

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Hickory's stock is publicly traded over-the-counter in the Minneapolis-St. Paul, Minnesota market. Its stock is widely dispersed: There are approximately 1,700 shareholders and no one shareholder owns more than 5% of the Company's stock. Hickory is presently not aware as to the personal net worth or other gross revenues/total assets of its 1,700 shareholders. Hickory does know that no person in its management has \$100 million or more in personal net worth. Its management does not exert control over the company through voting stock.

Against this factual background, MCTC is concerned that the attribution and affiliation rules adopted in the Fifth Report and Order in this proceeding may preclude MCTC, its sister telephone companies, or any other of the Hickory family of companies, from bidding for entrepreneurs' band PCS licenses. As a matter of economic reality, these companies, in all likelihood, will be unable to participate in broadband PCS auctions if they are blocked from the entrepreneurs' band by these rules. MCTC supports the Petitions for Reconsideration filed by Omnipoint and BHI insofar as these parties seek clarification and/or reconsideration of the affiliation and/or attribution rules. These rules appear to impose unreasonable requirements regarding the attribution of gross revenues and/or total assets for financial caps purposes, and they appear to impose unreasonable

"control group" standards for purposes of determining what interests are not attributable.¹

**THE ATTRIBUTION AND AFFILIATION RULES
NEED CLARIFICATION AND/OR RECONSIDERATION**

Omnipoint seeks clarification in its petition that the assets/revenues of persons or entities who hold a non-controlling interest in an attributable "investor in the applicant" are not attributable to the applicant/licensee. Omnipoint Petition for Reconsideration at 17. Omnipoint points to language in Section 24.720(1) of the PCS rules that defines the term "affiliate" consistently with its clarification request. Alternatively, Omnipoint proposes a "multiplier" approach for calculation of the financial caps. Id.

MCTC submits that Omnipoint's requested clarification should be granted by confirming that entities holding a non-controlling interest in an applicant's investor, will not be attributable. The Commission should further clarify that widely dispersed publicly traded stock, constitutes "a non-controlling interest" within the meaning of Omnipoint's petition, where no one person, or even a group or persons, controls the stock, as in Hickory Tech's circumstances.

¹ BHI appears to support more flexibility in the definition of "control group," BHI Petition for Reconsideration at 16, and MCTC agrees that more flexibility in the term may be needed, as discussed later. Omnipoint, however, appears to endorse the current definition of "control group" in its petition. Omnipoint Petition for Reconsideration at 7 n.10. If MCTC's understanding of Omnipoint's petition is correct, it opposes it to that extent.

Any conclusion to the contrary would produce absurd results. MCTC (and indeed the entire Hickory Tech family of companies) clearly satisfy the benchmarks for the entrepreneurs' band if its own gross revenues/total assets are considered. If, however, the gross revenues and total assets of Hickory Tech's 1,700 shareholders were attributed to it as Section 24.709(b)(1) of the rules may require, MCTC or Hickory Tech may be disqualified² from the entrepreneurs' band, even though the revenues and/or assets of such persons are not available to Hickory Tech. The Commission's rules clearly envision the participation by companies in the entrepreneurs' bands whose financial parameters will exceed the rules' revenue/asset caps and hence, who are all much larger than Hickory Tech. See 47 C.F.R. § 24.709(b)(4). It is respectfully submitted that no rational purpose would be served by fencing off from the entrepreneurs' band companies like Hickory Tech, while companies like AT&T and General Motors may own up to 49% of these licenses.

If the Commission declines to rule that entities holding a non-controlling interest in an applicant's affiliate are not attributable (and further that each stockholder in a widely dispersed stock is a non-controlling entity), MCTC alternatively proposes that the stockholders be treated as a homogenous group. Specifically, the Commission should declare that the entire universe of stockholders, where no one stockholder or group of

² As a practical matter, neither Hickory Tech, MCTC nor any other publicly traded company would ever be able to get its 1,700 shareholders to divulge this information.

stockholders exercises control, is a "control group" within the meaning of Section 24.709(b)(4). This request is premised on the assumption that the rule is meant³ to short-circuit the accumulation and aggregation process described in Section 24.709(b)(1). In that case, the "control group" of a publicly traded corporation with widely dispersed stock (and where management does not control through substantial stock ownership, see § 24.720(1)(2)(iii)) would be the stockholders themselves; thus no gross revenue, total asset or personal net worth attribution of the shareholders would occur under Section 24.709(b)(4). MCTC submits that this is a reasonable interpretation of the term "control group" under this circumstance. The Commission should clarify the Fifth Report and Order to this effect. (This conclusion assumes that the Commission does not grant Omnipoint's requested clarification of the rules to the effect that the interests of "non-controlling" investors in an investor in the applicant would not be attributed, and further that the Commission declines to clarify

³ It is not clear that Section 24.709(b)(4) is the mechanism for stopping the accumulation and aggregation of the gross revenues and total assets of investors in an applicant's affiliate, under Section 24.709(b)(1). Section 24.709(b)(1) mentions (b)(4) as an exception to the accumulation and aggregation rule, but (b)(4) does not discuss persons who hold interests in the affiliate(s) of an applicant. It is thus unclear how the exemption operates with respect to them. In MCTC's view, this further supports Omnipoint's request to not count the interests of "non-controlling" investors in an attributable investor in the applicant, qualified, of course, by MCTC's further request that where no one person or group of persons controls the applicant or an affiliate, they be deemed "non-controlling".

that individual investors, none of whom own more than 5% in an applicant's affiliate, are "non-controlling.")

CONCLUSION


There is a plain need for clarification and/or reconsideration of the Fifth Report and Order as described here. The Commission has announced that it may not address the effect of its auction rules on particular applicants prior to the auction, yet the penalties are severe if the rules are misinterpreted by applicants. Fifth Report and Order, para. 213. As the Commission has recognized, this circumstance places upon it a heavier responsibility to ensure that its rules are understandable. The Fifth Report and Order's attribution and affiliation rules as currently drafted do not meet this standard and appear to be especially problematic to existing concerns, like Hickory Tech, whose corporate architecture was not designed to meet "control group" definitions that reflect real world circumstances only by coincidence. The Commission is respectfully requested to promptly clarify or otherwise find that: (a) Section 24.709(b)(1) does not require that individual investors in a publicly traded company must have their gross revenues and/or total assets and/or personal net worth attributed directly, or indirectly, to an applicant, where the stock is widely dispersed, as here; or (b) declare that all of the stockholders in such a company are an acceptable "control group" under Section 24.709(b)(4), and hence their gross

revenues/assets/net worth will not be counter on top of the
revenues and assets that are produced by their investment.

Respectfully submitted,

**MANKATO CITIZENS TELEPHONE
COMPANY**

By



Benjamin H. Dickens, Jr.
John A. Prendergast
Susan J. Bahr

Their Attorneys

Blooston, Mordkofsky,
Jackson & Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037
(202) 659-0830

Dated: September 9, 1994

CERTIFICATE OF SERVICE

I, Christs L. Sanden, hereby certify that I am an employee of Blooston, Mordkofsky, Jackson & Dickens, and that on this 9th day of September, 1994, I caused mailed postage-prepaid, by U.S. first class mail, a copy of the foregoing **"Partial Opposition of Mankato Citizens Telephone Company"** to the following:

*Chairman Reed Hundt
Federal Communications Commission
1919 M Street, NW Room 814
Washington, DC 20554

*Commissioner James Quello
Federal Communications Commission
1919 M Street, NW Room 802
Washington, DC 20554

*Commissioner Andrew Barrett
Federal Communications Commission
1919 M Street, NW Room 826
Washington, DC 20554

*Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street, NW - Room 844
Washington, DC 20554

*Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW - Room 832
Washington, DC 20554

*Robert M. Pepper, Chief
Office of Plans and Policy
Room 822
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

*Donald Gips, Deputy Chief
Office of Plans and Policy
Room 822
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

*Jonathan Cohen
Office of Plans and Policy
Room 814
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

*Evan Kwerel
Office of Plans and Policy
Room 822
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

*William E. Kennard, General
Counsel
Federal Communications Commission
Room 614
1919 M Street, NW
Washington, DC 20554

*Sara Seidman, Special Assistant
Office of General Counsel
Federal Communications Commission
Room 614
1919 M Street, NW
Washington, DC 20554

*Peter Tenhula
Office of General Counsel
Federal Communications Commission
Room 615
1919 M Street, NW
Washington, DC 20554

*ITS
Room 246
1919 M Street, NW
Washington, DC 20554

Mark J. Tauber
Mark J. O'Connor
Piper & Marbury
1200 19th Street, NW
Seventh Floor
Washington, DC 20036

Debra L. Lee
Maurita K. Coley
Black Entertainment Television
1232 31st Street, NW
Washington, DC 20007

Leonard J. Kennedy
Laura H. Phillips
Richard S. Denning
Dow, Lohnes & Albertson
1255 23rd Street, NW
Washington, DC 20037

A handwritten signature in cursive script, reading "Christa L. Sanden", written in dark ink.

Christa L. Sanden

* = Via Hand Delivery